



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-820
Regulation title	General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharge and Nutrient Trading in the Chesapeake Bay Watershed in Virginia
Action title	Amend and Reissue the Existing Regulation
Date this document prepared	July 31, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This rulemaking is proposed in order to amend and reissue the existing general permit which expires on December 31, 2011. The general permit governs facilities holding individual VPDES permits that discharge or propose to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries. The facilities are authorized to discharge to surface waters and exchange credits for total nitrogen and/ or total phosphorus.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The basis of this regulation is §62.1-44.19:14 of the Code of Virginia as amended in the 2005 session of the General Assembly. As amended, §62.1-44.19:14 directs the State Water Control Board to issue a Watershed General Virginia Pollutant Discharge Elimination System (VDPES) Permit authorizing point

source discharges of total nitrogen and total phosphorus to the waters of the Chesapeake Bay and its tributaries. Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program. Legal authority for issuing general permits under State Water Control Law is §62.1-44.15(5), 15(10), and 15(14).

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

This proposed regulatory action authorizes wastewater discharges of nitrogen and phosphorus from wastewater treatment facilities already authorized by a Virginia Pollutant Discharge Elimination System permit. The general permit establishes annual effluent loading limits for nitrogen and phosphorus, and establishes the conditions by which credits (the difference in pounds between the facility's limit and the mass actually discharged) may be exchanged. The general permit also establishes how any increase in nitrogen or phosphorus loading from a new or expanding discharger must be offset by other nutrient reductions elsewhere in the basin. The primary issue that needs to be addressed is that the existing general permit expires on December 31, 2011 and must be reissued in order to continue making it available after that date.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

No specific changes to the existing general permit regulation have been identified at this time other than to continue the general permit by changing the effective dates of the general permit to January 1, 2012 through December 31, 2016. Amendments may be identified following the submittal of public comments on this notice or as the issues identified in "Need" are considered.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

As §62.1-44.19:14 of the Code of Virginia directs the State Water Control Board to issue this regulation, there are no viable alternatives.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, 3) potential impacts of the regulation and 4) impacts of the regulation on farm and forest land preservation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to George Cosby, DEQ, P.O. Box 1105, Richmond, VA 23218; telephone no. 804/698-4067; fax no. 804/698-4032; email george.cosby@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on Wednesday, October 14, 2009, the last day of the public comment period.

A public meeting will not be held.

Public Hearing at Proposed Stage

A public hearing will be held after publication of the proposed stage of the regulatory action.

Regulatory Advisory Panel

Please indicate, to the extent known, if advisers (e.g., regulatory advisory panels, technical advisory committees) will be involved in the development of the proposed regulation

The Board is using a technical advisory group (group) to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the panel is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the panel will be sent to all applicants.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation will have no direct impact on the institution of the family or family stability.